

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1330

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

United States of America,

Plaintiff-Appellee,

v.

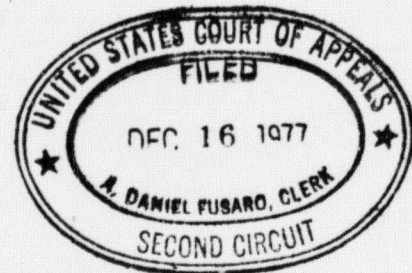
Alfred Lewis,

Defendant-Appellant.

B
P/S

United States District Court for the Southern
District of New York

APPELLANT's Pro-Se APPENDIX



PAGINATION AS IN ORIGINAL COPY

DATE	PROCEEDINGS (continued)	V. EXCLUD	
	(Document No.)	(a)	(b)
5-31-77	Filed Mag. Temp. commitment dated 1-27-77		

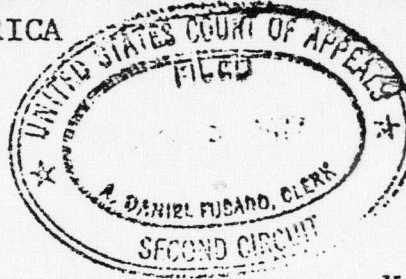
APPROVED
FEDERAL BUREAU OF INVESTIGATION

[Signature]
Deputy Clerk

UNITED STATES OF AMERICA

-v-

Alfred Lewis



United States District
For the Southern District
New York

Case No. 77 Cr 71

Judge Metzner

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U.S.C.A. NO. T-7493

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF
NEW YORK

-v-

CASE NO. 77 Cr 71

JUDGE Metzner

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United States Court of Appeals
for the Second Circuit
United States of America

U.S.C.A. No. E. 7493
U.S. District Court
Southern District of
New York

-VS-

Alfred Lewis

Care No. 77 Cr. 71
Judge Metzner

2nd Supplemental Record

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Certified extract of docket entries E

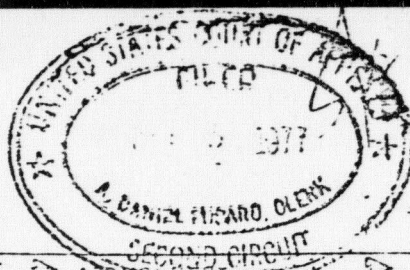
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KEY DATES & INTERVALS

ARREST or U.S. District Court 1/27/77	INDICTMENT X Information = 2-2-77	ADJUDICATION 2-3-77	TRIAL Verdict 4-13-77
First Appearance	In Charging District	Final Plea	Trial Ended 4-20-77

Disposition 4-20-77	5
Connected	
Accounting	
Dismissed	
On Government's	

STATEMENT RETURN	DATE 1/27/77	INITIAL NO. NG-08AJ	OUTCOME HELD FOR GOVT OR OTHER ORDERING NG DISTRICT
COMPLAINT	18 USC 2113(a) - BANK ROBBERY	PRELIMINARY EXAMINATION OR REMOVAL HEARING X NOT WAIVED	DATE 2/4/77

T. Barry Kingham
791-1056

ATTORNEYS
Legal Aid Society
15 Park Row, 10th Floor, N. Y. C.
577-3407

1/27/77 / Complaint filed, Legal Aid assigned. Defendant remanded into the custody of U.S. Marshal in lieu of \$75,000 cash/surety.

2-2-77 / INDICTMENT FILED, 77 CR 71.....Pierce, J.

2-3-77 Deft. (atty. Leonard F. Joy present) pleads not guilty. Bail \$75,000 as fixed by Magistrate continued (Remanded). Case assigned to Metzner, J. for all purposes.....Pierce, J.

2-4-77 Fld the following papers rec'd from Mag Gershon (Mag #77-100 Complaint-Disposition sheet- Cja form #23 Financial Affi order appointing counsel

03-15-77 PTC held by Metzner, J. - Bail as set in the sum of \$75,000 CO cash or surety is continued Deft. remanded in lieu of bail Motion by deft 03-01-77. Govt to answer 5 days later 03-07-77 - Metzner J remand issued

Id affid & notice of motion for an order to suppress
et 3-11-77
Fld Govt's memorandum of law
Fld affid of T. Barry Kingham AUSA in opposition to deft's motion
to suppress evidence

- 77 Filed order & affid for issuance of subpoena. So ordered Metzner, J.
- 4-4-77 Suppression hearing held & adj to 4-14-77 at 2:00
if neccessary or the Court can reserve on wh
now has before it....Metzner, J.
- 4-8-77 Filed Transcript of record of proceedings, dated 2-15-77
- 4-14-77 Filed affid & order for issuance of subpoena issued
REinaldo Carnaval So ordered Metzner, J. M/N
hearing
- 4-14-77 Suppression/continued & concluded-Motion denied..Metzner, J.
- 4-18-77 Filed Govt's requests for the Voir Dire
- 4-19-77 Filed deft's proposed questions for the Voir Dire
- 4-20-77 Filed deft's requests to charge
- 4-20-77 Filed governments requestrs to chsrge
- 4-18-77 Jury impanelled & sworn, trial begins as to deft
- 4-19-77 Trial continued
- 4-20-77 TRIal continued & concluded Deft GUILTY on each of counts
(1) & (2) Jurors polled. PBI ordered. Sentence May 17, 1977
Bail in the amount of \$75,000 ,cash or surety continued
Deft remanded in leau of bail.....Metzner, J.
- 5-13-77 Filed deft's notice of motion to vacate verdict of conviction
- 5-18-77 Filed Judgment & commitment Deft(atty present) The deft is hereby
committed to the custody of the atty General or his authorized
representative for imprisonment for a period of FIFTEEN (15)
YEARS. on each of counts (1) & (2) to run concurrently with
each other....METZNER, J. Copies issued (ent 5-19-77)
- 5-25-77 Filed notice of appeal fro m judgment of conviction entered
on the 18th day of May 1977. (Mailed notice to, deft's atty)
(& U.S. Atty)
- 5-27-77 Filed OPINION # 45953- This a motion by deft convicted on April 20, 1977 of
two counts of armed Bank robbery ,to set aside the verdict for lack
of effective representation by Court appointed counsel. Mr. Joy of the
Fed. DEF. Unit of the Legal Aid Socirty who, represented the deft tried
this case in his usual competent manner.. Accordingly, this motion
is denied...METZNER, J. M /N (continued in pg 3)

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER



United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

ONE ST. ANDREW'S PLAZA

NEW YORK, NEW YORK 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

TBK:dgg

77-0342

2-1544

Record on Appeal Doc. No 26

February 17, 1977

Leonard Joy, Esq.
Federal Defender Services Unit
Legal Aid Society
Two Lafayette Street
New York, N. Y. 10007

Re: United States v. Alfred Lewis,
77 Cr. 71 (CMM)

Dear Mr. Joy:

In accordance with the Government's discovery obligations enclosed are the following:

1. Copies of prints of surveillance photos;
2. Copy of Police Department print-outs of 911 and radio car calls;
3. Copy of Police Department tape recordings of 911 and radio car calls.

The Government may seek to introduce the following items of physical evidence. Items marked with an asterisk have been forwarded to the FBI Laboratory for fingerprint and microscopic examination and will be available for your inspection as soon as the report is completed. Other items are available for inspection by appointment at my office:

1. Bank records: tellers' lists of bait money;
2. Found in or near getaway car:
 - a. knit wool hat*
 - b. clear glass bottle with "Vicks Formula 44" on top, containing small quantity of unknown liquid;*
 - c. pair of pliers, 8" long*



Leonard Joy, Esq.

-2-

February 17, 1977

- d. screwdriver with yellow red handle*
 - e. set of three keys and Chevrolet ornament on a safety pin
 - f. pair of brown gloves*
 - g. black circular piece of plastic, 1 1/3" in diameter*
 - h. three latent fingerprints*
 - i. \$5,000 wrapped and 4 \$1 bills (returned to Chemical Bank)
3. Taken from defendant's person:
- a. .45 calibre automatic pistol*
 - b. .45 calibre ammunition from gun and clips*
 - c. two clips for .45 pistol*
4. Taken from taxicab from which defendant exited at time of arrest:
- a. \$55,138 in currency (all but about \$400 in bait money returned to Chemical Bank)
 - b. blue suitcase*
 - c. two shopping bags*
 - d. 3 cash substitute tickets and 4 cash machine envelopes from bank, found in bags*
 - e. knit wool ski mask*

With respect to identification procedures, three bank employees viewed the defendant in a "showup" at the 20th Precinct within an hour of the robbery. One identified his clothing; two others, who had seen his unmasked face during the chase, identified him as the robber.

The information you requested with respect to the name and address of a possible witness is: Reinaldo Carnaval, 355 East 61st Street, New York, New York.

You indicated at the pretrial conference that your investigator had encountered difficulty interviewing bank witnesses. If you furnish me with the name of the bank officer to whom your investigator spoke, I will contact him to express the Government's position that we have no opposition

Leonardo Joy, Esq.

-3-

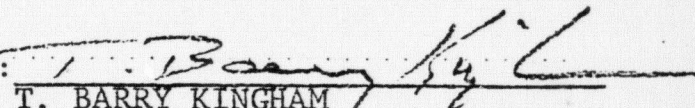
February 17, 1977

to the witnesses' speaking with defense counsel or investigators, and that the decision to do so or not is solely in the witness' discretion. You should note that in interviews with the FBI, the following witnesses tentatively identified that bank robber as being a white man: Daniel Gonzalez ("possibly white"); Lorna Pollonkis, Carrie Horton, Stanley Goodman (a passerby), and Reinaldo Carnaval. The Government is unaware of any other information which could be construed as covered by Brady v. Maryland, 373 U.S. 83 (1963).

Any other items of discovery, not known to the Government at this time, will be furnished as soon as they become known. For example, you will be furnished with a copy of the laboratory reports as soon as they are completed.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: 
T. BARRY KINGHAM
Assistant United States Attorney
Telephone: (212) 791-1056

cc: Honorable Charles M. Metzner
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, :

-against- :

ALFRED LEWIS, :

Defendant. :

----- x
MEZNER, D. J.:

This is a pro se motion by defendant Alfred Lewis, convicted on April 20, 1977, of two counts of armed bank robbery, to set aside the verdict for lack of effective representation by court appointed counsel.

Defendant raises three points of trial strategy that would not have affected the outcome and do not indicate any incompetence on the part of defense counsel. Defendant first argues that counsel should have introduced a prior statement of a police sergeant that he found a ski mask in the robber's getaway car after the sergeant testified that he did not find a ski mask in the car. There were two ski-type head coverings involved in this case. The first was a ski mask with the top cut off. It was found around the defendant's neck upon arrest. The second was a green ski cap found in the street alongside the getaway car. It had two holes cut in it.

Pro Se
77 Cr. 71
(CMM)

45953

MAY 11 11 37 AM '77

MAY 27 1977

During the testimony there was some confusion with regard to characterizing this cap as a hat or ski mask because of the holes cut in the top. The introduction of the prior statement in this instance would have been of little value in impeaching the seargent's testimony. He identified the cap in evidence and testified that it was found beside the car in the street and explained why he called it a mask.

Defendant's next point is that the defense should have called a witness who would have testified that he saw Lewis being led into the police station followed by a policeman carrying the green jacket allegedly worn by the perpetrator of the crime. The testimony as it stood merely indicated that the green jacket was seen in the holding cell with Lewis. Whether it was better to leave the impression that someone planted the jacket in the cell with Lewis which is what occurred on the trial, or to produce the additional testimony which might imply that the jacket was found when defendant was arrested and brought to the station with him, is a matter of trial strategy.

Finally, defendant objects to the failure of his counsel to call a police department communications expert. Since the court had ruled out the tapes and printout of 911 and radio broadcast communications,

there was no need for a police expert to testify how they were made.

None of these claimed errors by counsel, either singly or in totality, justify a finding of denial of effective assistance of counsel. They certainly do not remotely approach a showing that would shock the conscience of the court. United States v. Currier, 405 F.2d 1039, 1043, cert. denied, 395 U.S. 914 (1969).

Mr. Joy of the Federal Defender Services Unit of the Legal Aid Society who represented the defendant, tried this case in his usual competent manner.

Accordingly, this motion is denied.

So ordered.

Dated: New York, N. Y.
May 26, 1977

Charles W. Metzger
U. S. D. J.

Yonk State Library
Title II PRELIMINARY PROCEEDINGS § 140.50

Practice Commentary

By Richard G. Denzer

The purpose of this section, which is new, may be appreciated by recalling that, in case of an arrest under a warrant, the information or felony complaint underlying the warrant is filed with, and examined for sufficiency by, a local criminal court before the arrest is made (CPL § 120.10 [1]). In the case of an arrest without a warrant, however, the information or felony complaint is not filed until after the defendant is brought to court. Since this is the court's first opportunity to examine it, it should have the power to reject it on that occasion.

Library References

Indictment C 137(1).	and	Information	C.J.S. Indictments and Informations § 201 et seq.
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§ 140.50 Temporary questioning of persons in public places;
search for weapons

1. In addition to the authority provided by this article for making an arrest without a warrant, a police officer may stop a person in a public place located within the geographical area of such officer's employment when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a class A misdemeanor defined in the penal law, and may demand of him his name, address and an explanation of his conduct.

2. When upon stopping a person under circumstances prescribed in subdivision one a police officer reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons. If he finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, he may take it and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

L.1970, c. 996, § 1, eff. Sept. 1, 1971.

Source of Section

Code Crim.Proc. 1881, § 180-a, added L.1964, c. 86, § 2; amended L. 1967, c. 681, § 39.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

United States of America

v.

Alfred Lewis,

Defendant-Appellant.

Docket No. 77-1330

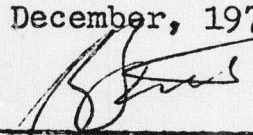
AFFIDAVIT OF FILING AND
SERVICE

DEC 16 1977

This is to verify that today I filed with the Court of Appeals by mail the accompanying four copies of the appellant's brief in the above entitled action and served by mail on the respondent-appellee one copy of the accompanying appellant's brief by placing same before 12:01 o'clock p.m. in both cases in the hands of the undersigned Atlanta Penitentiary caseworker for immediate mailing in envelopes addressed respectively as follows:

Clerk's Office—United States Court of Appeals
Second Circuit, U.S. Court House , Foley Square,
New York, N.Y. 10007
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, N.Y. 10007

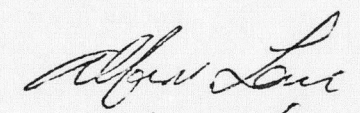
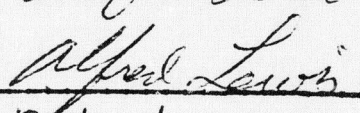
Sworn to before me this 13
day of December, 1977


Notary Public

VS/ BERKELEY STROBEL
SENIOR CASE MANAGER

13 DEC 1977

Parole Officer: Authorized by the Act of
July 7, 1955 to Administer Oaths (18 U.S.C.
4004).



Defendant-Appellant
#05241 Box PMB
Atlanta, Ga. 30315